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RICHARD W. WILKING
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8 *Chet* ADR
9 UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 CHARLES MCKAIN,

12 Case No. C 10-00340

13 MEJ

14 Plaintiff,

15) COMPLAINT FOR VIOLATION
16) OF FEDERAL FAIR DEBT
17) COLLECTION PRACTICES ACT,
18) ROSENTHAL FAIR DEBT
19) COLLECTION PRACTICES ACT,
20) AND INVASION OF PRIVACY
21)
22)
23)
24)
25)
26)
27)
28)

vs.
AARGON COLLECTION
AGENCY,

Defendant.

19 I. INTRODUCTION

20 1. This is an action for damages brought by an individual consumer for
21 Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §
22 1692, *et seq.* (hereinafter "FDCPA"), and the Rosenthal Fair Debt Collection
23 Practices Act, Cal Civ Code § 1788, *et seq.* (hereinafter "RFDCPA"), both of
24 which prohibit debt collectors from engaging in abusive, deceptive, and unfair
25 practices. Ancillary to the claims above, Plaintiff further alleges claims for
26
27
28 practices.

1 invasion of privacy arising from intrusion upon seclusion and public disclosure of
2 private facts.
3

4 **II. JURISDICTION**

5 2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d).
6

7 **III. PARTIES**

8 3. Plaintiff, CHARLES MCKAIN (“Plaintiff”), is a natural person
9 residing in Santa Clara county in the state of California, and is a “consumer” as
10 defined by the FDCPA, 15 U.S.C. § 1692a(3) and is a “debtor” as defined by Cal
11 Civ Code 1788.2(h).
12

13 4. At all relevant times herein, Defendant, AARGON COLLECTION
14 AGENCY, (“Defendant”) was a company engaged, by use of the mails and
15 telephone, in the business of collecting a debt from Plaintiff which qualifies as a
16 “debt,” as defined by 15 U.S.C. §1692a(5), and a “consumer debt,” as defined by
17 Cal Civ Code § 1788.2(f). Defendant regularly attempts to collect debts alleged
18 to be due another, and therefore is a “debt collector” as defined by the FDCPA,
19 15 U.S.C. § 1692a(6), and RFDCPA, Cal Civ Code § 1788.2(c).
20

21 **IV. FACTUAL ALLEGATIONS**

22 5. At various and multiple times prior to the filing of the instant
23 complaint, including within the one year preceding the filing of this complaint,
24 Defendant contacted Plaintiff in an attempt to collect an alleged outstanding debt.
25

1 Defendant's conduct violated the FDCPA and the RFDCPA in multiple ways,
2 including but not limited to:

- 3 a. Causing a telephone to ring repeatedly or continuously to
4 annoy Plaintiff (Cal Civ Code § 1788.11(d));
- 5 b. Communicating, by telephone or in person, with Plaintiff
6 with such frequency as to be unreasonable and to constitute
7 an harassment to Plaintiff under the circumstances (Cal Civ
8 Code § 1788.11(e));
- 9 c. Causing Plaintiffs telephone to ring repeatedly or
10 continuously with intent to harass, annoy or abuse Plaintiff
11 (§ 1692d(5)); and
- 12 d. Communicating with Plaintiff at times or places which
13 were known or should have been known to be inconvenient
14 for Plaintiff, (§ 1692c(a)(1)).

15 6. Defendant's aforementioned violations of the FDCPA and RFDCPA
16 also constitute an intentional intrusion into Plaintiff's private places and into
17 private matters of Plaintiff's life, conducted in a manner highly offensive to a
18 reasonable person. Plaintiff had a subjective expectation of privacy that was
19 objectively reasonable under the circumstances.

20 7. Defendant's aforementioned disclosure of facts regarding Plaintiff's
21 debt to third parties constitutes a public disclosure of a private fact not of
22

legitimate public concern. Defendant's disclosures were highly offensive to a reasonable person.

8. As a result of the above violations of the FDCPA, RFDCPA and invasion of privacy, Plaintiff suffered and continues to suffer injury to Plaintiff's feelings, personal humiliation, embarrassment, mental anguish and emotional distress, and Defendant is liable to Plaintiff for Plaintiff's actual damages, statutory damages, and costs and attorney's fees.

**COUNT I: VIOLATION OF FAIR DEBT
COLLECTION PRACTICES ACT**

9. Plaintiff reincorporates by reference all of the preceding paragraphs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Declaratory judgment that Defendant's conduct violated the FDCPA;
- B. Actual damages;
- C. Statutory damages;
- D. Costs and reasonable attorney's fees; and,
- E. For such other and further relief as may be just and proper.

**COUNT II: VIOLATION OF ROSENTHAL
FAIR DEBT COLLECTION PRACTICES ACT**

10. Plaintiff reincorporates by reference all of the preceding paragraphs.

11. To the extent that Defendant's actions, counted above, violated the RFDCPA, those actions were done knowingly and willfully

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Declaratory judgment that Defendant's conduct violated the RFDCPA;
- B. Actual damages;
- C. Statutory damages for willful and negligent violations;
- D. Costs and reasonable attorney's fees,
- E. For such other and further relief as may be just and proper.

**COUNT III: COMMON LAW INVASION OF PRIVACY BY INTRUSION
AND INVASION OF PRIVACY BY PUBLICATION OF PRIVATE FACTS**

12. Plaintiff reincorporates by reference all of the preceding paragraphs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Actual damages
- B. Punitive Damages; and,
- C. For such other and further relief as may be just and proper.

PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY

Respectfully submitted this 15th day of January, 2010.

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